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INTERESTED PARTIES MEETING

REPORTER'S TRANSCRIPT

DECEMBER 14, 2005

IN RE:

RULES FOR CALIFORNIA TAX ADMINISTRATION AND

APPELLATE REVIEW

PART 4

APPEALS FROM ACTIONS

OF THE

FRANCHISE TAX BOARD

Reported by: Carole W. Browne, CSR 7351  
Laurie Gower, CSR 8000

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1 SACRAMENTO, CALIFORNIA

DECEMBER 14, 2005

2 ---o0o---

3 MS. PELLEGRINI: Good morning. I'm Deborah  
4 Pellegrini. I'm the Chief of Board Proceedings, and  
5 we're going to start the meeting now.

6 We're here this morning to take the comments on  
7 Part 4 of the California Tax Administration and  
8 Appellate Review.

9 We are going to begin by going around the room  
10 and giving introductions. As you can see, we have two  
11 court reporters here today who will be making a  
12 transcript, and we're assuming it will be due right  
13 after the first of the year.

14 We're also going to send around a sign-in  
15 sheet. We're requesting that if you have your business  
16 cards with you, that you provide the court reporters a  
17 copy of your business card.

18 And as we go around and do introductions, if  
19 you will speak slowly and say your name and who you  
20 represent. Therefore, after we start the proceedings,  
21 all you'll need to do is, the first time you speak, say  
22 your first name and last name, and after that you can  
23 just speak by saying Debbie, Joe, and pretty soon the  
24 hearing reporters will figure out who you are and we  
25 don't have to go through your whole name and who you

1 represent every time. So we'll take those few minutes  
2 right at the beginning.

3 After we finish introductions, I will overview  
4 the meeting and how we're going to proceed. So I'm  
5 going to start and say I'm Deborah Pellegrini, the Chief  
6 of Board Proceedings.

7 MS. RUWART: I'm Carole Ruwart with the Board's  
8 Legal Department.

9 MR. DAVIS: Kenneth Davis with the Franchise  
10 Tax Board.

11 MS. BORGMAN: Susan Borgman, Franchise Tax  
12 Board.

13 MR. LANGSTON: I'm Bruce Langston from  
14 Franchise Tax Board, Tax Procedure and Administration  
15 Bureau.

16 MR. VINATIERI: I'm Joe Vinatieri from Bewley,  
17 Lassleben & Miller Law Firm.

18 MR. HELLER: I'm Bradley Heller with the  
19 Board's Legal Department.

20 MR. FOSTER: Ian Foster with the Board's Legal  
21 Department.

22 MR. HERD: I'm Jim Herd with Betty Yee's  
23 office.

24 MR. EVANS: I'm Gary Evans with Board  
25 Proceedings.

1 MR. SMITH: Chris Smith with Betty Yee's  
2 office.

3 MR. APREA: I'm Marc Aprea, Aprea & Company,  
4 here on behalf of Price Waterhouse Coopers.

5 MR. DANOWITZ: Steve Danowitz from Ernst &  
6 Young.

7 MR. PLANT: Philip Plant from Plant, Bauer &  
8 Smith.

9 MR. SCHUTZ: Chris Schutz, John Chiang's  
10 office.

11 MS. ZIMMERMAN: Sarah Zimmerman, SEIU Local  
12 1000.

13 MS. CROCETTE: Sabina Crocette, Betty Yee's  
14 office.

15 MS. KINKLE: Sherrie Kinkle, Board of  
16 Equalization, Property Taxes.

17 MS. LANDEROS: Rebecca Landeros, Board  
18 Proceedings.

19 MR. SHALTES: Craig Shaltes, Board of  
20 Equalization Legal.

21 MR. KOCH: Al Koch, MBIA.

22 MR. KAMP: Steve Kamp, Board member Betty Yee's  
23 office.

24 MR. LoFASO: Allen LoFaso, Board member Betty  
25 Yee's office.

1 MS. WAGGENER: Michele Waggener, Price  
2 Waterhouse Cooper.

3 MR. RIVERA: Gus Rivera, Intel Corporation.

4 MR. SHAH: Neil Shah, Board member Claude  
5 Parrish's office.

6 MR. PENILLA: Jess Penilla, Deloitte & Touche.

7 MS. PELLEGRINI: And now those of you on the  
8 telephone.

9 MS. MATULICH: Hi. This is Diane Matulich.  
10 I'm with Advanced Microdevices.

11 MR. HARRIS: Bill Harris with Intel  
12 Corporation.

13 MR. KENWITH: Pete Kenwith with Phillips  
14 Electronics.

15 MR. EVERETT: Kirk Everett, Silicon Valley  
16 Leadership Group.

17 MS. PELLEGRINI: Can the last person speak up a  
18 little bit more?

19 MR. EVERETT: Kirk Everett, Silicon Valley  
20 Leadership Group.

21 MS. PELLEGRINI: Thank you. Is there anyone  
22 else on the telephone? Okay.

23 And those who have not introduced themselves  
24 who've just come in?

25 MR. GOLDBERG: Lenny Goldberg, California Tax

1 Reform Association.

2 MS. MAHONEY: Laura Mahoney, Daily Tax Report.

3 MS. PELLEGRINI: Okay. And again, when you  
4 speak the first time, if you will say your first name  
5 and your last name, and after that, you can just say  
6 your first name. That way we'll make sure the  
7 transcript is accurate.

8 We are going to start the meeting with Brad  
9 Heller, who will be providing an overview of the  
10 amendments to Part 4 that were sent out last Friday,  
11 December the 9th, which replaced Article 3 through 6  
12 with new Articles 3 through 5 and the amendment to  
13 4020(c). After that, Ian Foster will be walking through  
14 the amendments, explaining the purpose of the amendments  
15 and how they work.

16 During these two presentations we're going to  
17 ask that you hold your questions and let the  
18 presentations go. At the end of each presentation, you  
19 can ask questions.

20 After that, Carole Ruwart will be walking you  
21 through the sections, section by section, while  
22 receiving comments so that we can have the discussion.

23 It is our goal to try to be completed by 12:30,  
24 as we have the next Interested Parties Meeting beginning  
25 at 1:30. So with that, I'll turn it over to Brad.



1 MR. HELLER: Thank you, Debbie.

2 My name is Bradley Heller. I'm an attorney  
3 with the Board's Legal Department, and I've been working  
4 on this project since July.

5 And just as some background, basically back in  
6 September we issued proposals to create the Board of  
7 Equalization Rules for California Tax Administration  
8 Appellate Review, and they're broad, comprehensive  
9 regulations that would govern all of the administrative  
10 processes, from the initiation of a petition or a  
11 request for review, a request for relief, a claim for  
12 refund, a request for reassessment, all the way  
13 through -- or appeal from the Franchise Tax Board -- all  
14 the way through to the end of the Board's decision.

15 At this point we've already held interested  
16 parties meetings in October and November that dealt with  
17 Part 2, Business Taxes, and Part 3, Property Taxes.  
18 Today we're going to -- or this morning we're dealing  
19 with Part 4 that deals with appeals from the Franchise  
20 Tax Board.

21 Last Friday afternoon we posted amendments to  
22 both Part 2 and Part 4. Part 2 is, as I said, the  
23 Business Taxes portion. And those amendments  
24 essentially inserted a briefing schedule which we  
25 omitted originally and also made kind of some small

1 changes to the way that -- basically small changes to --  
2 I think it's Section 2106 which deals with request for  
3 reconsideration of decisions and recommendations and  
4 requesting oral hearings before the Board and basically  
5 were just amendments to clarify some terms and to  
6 account for other agencies that may participate in  
7 appeals conferences.

8 Today, more importantly, are the amendments to  
9 Part 4, which, basically what they did was, they amended  
10 Section 4020(c) and then they also replaced Articles 3  
11 through 6 with new Articles 3 through 5. And we had  
12 copies of the amendments available this morning, and we  
13 still have copies available if anyone needs one.

14 We're accepting comments on all of the original  
15 proposals plus all these amendments through next Friday,  
16 December 23rd. And I'll be available by phone as well  
17 if anybody would like to speak with me to submit  
18 comments. We'd like to make, you know, the process of  
19 dealing with these amendments as easy as possible for  
20 everyone.

21 Basically, in order to facilitate everyone's  
22 review of the new appeals procedures that are being  
23 amended into Part 4 we're going to have Ian Foster  
24 briefly explain how they're supposed to work and what  
25 those provisions do and what our intent was for them,

1 and then we're going to go through starting with  
2 Articles 1 and 2 of the original and then Articles 3  
3 through 5 of the amendments.

4 And basically this morning it's an informal  
5 process. We're here basically to make sure that we hear  
6 everyone's comments and that we have an opportunity to  
7 take in information so that we can consider it in  
8 preparing the final product for the Board members.

9 Our hope is to have a package for the Board  
10 members to vote on at the February 1st meeting. In  
11 order for us to do that, we'll probably have to have it  
12 done a couple weeks before that so the Board members can  
13 review it and issue all of our necessary notices. So  
14 we're on a kind of a tight time frame as we are this  
15 morning as well.

16 So basically we would like everybody to go  
17 ahead and take an opportunity to comment whatever they  
18 feel is necessary or relevant today. We definitely  
19 appreciate all the comments that we've received so far.  
20 They've been very useful.

21 But basically, once you've commented, if you  
22 can let the next person take a chance to comment, we'll  
23 go ahead and note where we'll make adjustments if  
24 there's a consensus from all the comments that something  
25 needs to be done or if it's administrative or clerical

1 type of fixes. Otherwise, we're just going to go ahead  
2 and record those comments so we can consider and respond  
3 to them later. And that way we think we can get through  
4 the process a little faster.

5 But like I said, it's really informal. We're  
6 here to have a discussion, to make sure that all the  
7 relevant issues are discussed today.

8 With that, I'll go ahead and turn it over to  
9 Ian for an explanation or an overview of his amendments.

10 MR. FOSTER: Thanks, Brad.

11 For those of you that don't know me, again, my  
12 name is Ian Foster. I work in the Board's Legal  
13 Department. Specifically for the last five years I've  
14 been in franchise and income tax appeals, and along with  
15 Brad and Carole for a number of months I've been doing a  
16 lot of grunt work on these regulations.

17 Let me start with the first and the least  
18 controversial of the amendments that was posted last  
19 Friday, and that has to do with electronic filing. In  
20 our original versions we had omitted any reference to  
21 electronic filing as we were still trying to figure out  
22 how that was going to work.

23 The document is entitled "To Interested  
24 Parties." It's not dated. It's about halfway through  
25 that document. Rebecca has copies.

1 MR. HELLER: Let's just take a moment.

2 MS. RUWART: This is posted on the Internet.

3 MR. FOSTER: This has all been posted on the  
4 Internet since last Friday.

5 MS. RUWART: For people on the telephone, this  
6 new document was posted on the Board's website last  
7 Friday, and so if you want to get a copy of that  
8 handout, then you can go to the Board's website front  
9 page, the Rules of Practice link, and you should be able  
10 to find it if you wanted to follow along.

11 MR. HELLER: Yeah. If you click on the link on  
12 our home page that has the notice for today's date and  
13 this meeting, that will take you to our overview page  
14 for the entire project, and just click on the  
15 December 9th date and that will have all the amendments  
16 listed right next to it, so you can pull down all that  
17 information.

18 MS. MATULICH: Thank you very much.

19 MR. FOSTER: Is everybody up to speed then?  
20 Okay.

21 We amended Section 4020, subdivision (c), to  
22 take into account electronic filing. It's pretty basic.  
23 It just provides that people can file their appeals and  
24 any related documents by fax, e-mail, or any other  
25 approved electronic means.

1           It's very generic. It just says that the Board  
2 Proceedings Division will notify people of the  
3 acceptable methods, e-mail addresses, fax numbers, and  
4 so forth.

5           And then we made technical amendments  
6 throughout other sections. Anytime filing of a document  
7 was involved, we simply referenced back to 4020(c) so  
8 that we don't have to repeat all the language on the  
9 various ways you can file.

10           Now on to the most substantial change. The  
11 amendments that were posted last week add a provision  
12 for appeals conferences and all appeals from actions of  
13 the Franchise Tax Board, and it includes income,  
14 franchise, HRA appeals, any appeal from the Franchise  
15 Tax Board.

16           We had a number of reasons and purposes for  
17 doing this. One of them right up front was uniformity.  
18 There were a lot of comments on the Board's procedures  
19 being not uniform. This creates uniformity among the  
20 procedures. It makes our FIT procedures look more like  
21 business tax procedures. Taxpayers and tax  
22 practitioners will no longer have to learn different  
23 procedures for different types of taxes.

24           The next reason is efficiency. Although an  
25 appeals conference does add an extra step in most cases,

1 we believe it will provide a more developed record,  
2 particularly in complex cases. Appeals division  
3 attorneys will be better prepared to make  
4 recommendations to the Board and answer the Board's  
5 questions.

6 Likewise, Franchise Tax Board attorneys will be  
7 better prepared going into Board hearings, FTD attorneys  
8 will be on equal footing with the BOE's business tax  
9 attorneys, now having the benefit of a decision and  
10 recommendation on issues before the Board.

11 We believe all of this will allow the Board to  
12 make a more informed decision, conduct a more efficient  
13 oral hearing, and hopefully reduce the need for  
14 post-hearing evidence and briefing, possibly reduce the  
15 need for petitions for rehearing.

16 The appeals conference will be much less  
17 adversarial. Appeals conferences will provide an  
18 atmosphere for the parties to hopefully cooperate,  
19 possibly compromise, possibly resolve the appeals in  
20 some cases, and at the least, we hope it will narrow  
21 issues and reach stipulations of fact.

22 UNIDENTIFIED SPEAKER: What page on your  
23 documents are you referring to?

24 MR. FOSTER: We're not going through section by  
25 section right now. We're just getting an overview of

1 all the amendments and then we'll go through it section  
2 by section.

3 UNIDENTIFIED SPEAKER: All right. I  
4 understand.

5 MR. FOSTER: A big problem in our current  
6 procedures is our inability to handle in-depth  
7 discussions of complex cases. Franchise Tax Board cases  
8 can get very complex legally and factually. And  
9 generally, currently, those cases go straight to the  
10 Board for oral hearing.

11 Because of time constraints, the Appeals  
12 Division is unable to dig into the case, resolve factual  
13 disputes, resolve outstanding legal questions, and what  
14 we end up with are short, ten-minute presentations at  
15 the Board that are too short for in-depth discussion and  
16 a lot of post-hearing work afterwards.

17 If there's an appeals conference beforehand,  
18 the parties in the Appeals Division can sit down and  
19 hopefully resolve a lot of outstanding questions, take  
20 an in-depth look at the complex issues, and then go to  
21 the Board with a much more complete record.

22 We're also concerned about accessibility to  
23 unrepresented taxpayers. The current system is very  
24 formal, impersonal, and even intimidating to  
25 unrepresented taxpayers, particularly HRA claims. We're



1 hoping that appeals conferences will provide a more  
2 informal forum for people to express their opinions and  
3 have a give-and-take discussion.

4 I'd also like to note that a lot of the revised  
5 sections -- we revised Articles 3 through 6 and  
6 consolidated down to Articles 3 through 5. A lot of the  
7 revised sections are substantially similar to the ones  
8 posted on the Web in December.

9 A lot of the changes are technical in nature.  
10 We had to change numbering and references and some minor  
11 procedures to incorporate the idea of appeals  
12 conferences; but other than those technical changes,  
13 they're pretty much the same as they appeared before.

14 The other new procedure is that for small tax  
15 cases and HRA appeals we put in a simplified, shortened  
16 briefing schedule that hopefully will be less  
17 intimidating, less formal, and more useful to people who  
18 have small amounts of tax or small amounts of penalties  
19 at issue.

20 The small tax procedure will be mandatory for  
21 all homeowners and renters assistance appeals, because  
22 those appeals typically don't require long briefing  
23 procedures anyway. They will be elective for income tax  
24 cases involving no more than \$10,000, at the taxpayer's  
25 election.

1           Typically, in those cases, our current longer  
2 briefing schedule doesn't serve much purpose other than  
3 to drag out the process unnecessarily; and the  
4 simplified briefing schedule will not only shorten  
5 things, but if it leaves issues unresolved, then we  
6 still have the appeals conferences to resolve those  
7 issues.

8           I'd also like to take you through a brief  
9 overview of sort of how the process will now look in  
10 approving appeals conferences.

11           You start at the beginning, a taxpayer or an  
12 HRA claimant files an appeal. If it's timely, if we  
13 have jurisdiction, and if the appeal contains  
14 substantially all of the information that we need to  
15 process the appeal, which does include a signature of  
16 the taxpayer, we take it in, we accept the appeal and  
17 the briefing process begins.

18           If the appeal is incomplete, missing some  
19 information, the taxpayer will have 90 days to perfect  
20 the appeal before briefing begins.

21           And if there's some dispute about timeliness or  
22 jurisdiction, we can still take it in, and that dispute  
23 will be part of the briefing process.

24           If there's no dispute about timeliness or  
25 jurisdiction, we clearly don't have jurisdiction, it's

1 clearly not timely, the appeal will be rejected outright  
2 in the beginning.

3           Once briefing begins, there will be three  
4 different types of briefing schedules. The default  
5 briefing schedule, which will apply in most cases, is  
6 substantially similar to our existing practice.

7           There will be a new briefing schedule for  
8 innocent spouse cases. Amendments in the last few years  
9 to the innocent spouse statutes require that both  
10 spouses be allowed to participate in the appeal, so  
11 we've had to amend the briefing schedule for innocent  
12 spouse cases to give substantial participation of both  
13 spouses. It's a somewhat complicated briefing schedule,  
14 but it actually is streamlined and clarified from our  
15 existing practice. And then, finally, we have the  
16 simplified briefing schedule for small tax cases and HRA  
17 cases.

18           When the briefing is complete, there will be an  
19 appeals conference scheduled. Board Proceedings will  
20 handle the scheduling and noticing of the appeals  
21 conference.

22           There is a mechanism, just like there is for  
23 business taxes, for postponements, waiving appearances,  
24 and collecting additional briefing and evidence.

25           If evidence or briefing is accepted after the

1 appeals conference, the other party also will have to be  
2 given a chance to respond.

3 An appeals attorney, just like in business  
4 taxes, will be the conference holder, and the Appeals  
5 Division will develop procedures to ensure that all  
6 conferences are conducted in a fair, uniform and  
7 efficient manner.

8 After the conference, the Appeals Division will  
9 prepare a decision and recommendation. This will  
10 contain findings of fact, conclusions of law, and an  
11 explanation of any questions left unanswered or any  
12 evidence that was left unrepresented. A D & R will  
13 contain the appeals attorney's recommendation for how to  
14 resolve the appeal.

15 For small tax and HRA appeals, the D & R is the  
16 end of the line. They cannot request a Board hearing.  
17 If they want to challenge, they have to file a petition  
18 for rehearing. And that will be made clear up front for  
19 taxpayers when they're asked whether they want to elect  
20 a small tax procedure, they'll be notified that an  
21 election means a waiver of the right to Board hearing.  
22 Of course, the Board, in its discretion, can always  
23 order a hearing in any case.

24 For all other cases, the parties will have  
25 30 days from the decision and recommendation to

1 challenge it and request a Board hearing. If there is  
2 no request, the D & R goes before the Board as a  
3 nonappearance item.

4 If there is an oral hearing, then the Appeals  
5 Division prepares a hearing summary just like our  
6 existing practice. And, of course, in all cases,  
7 everybody retains the right to file petitions for  
8 rehearing regardless of whether there wasn't any oral  
9 hearing.

10 That basically concludes my overview.

11 MS. RUWART: At this point in time I'd like to  
12 explain the process by which we're going to go through  
13 the taking of the comments.

14 It's going to be essentially linear. We'll  
15 start from the beginning, take comments on each section  
16 in seriatim, and we don't want to go backtracking if at  
17 all possible.

18 What I will do is, we'll go through Article 1,  
19 and then once -- and then we have one change in  
20 Article 2, so you probably should have both the old  
21 version and the new version -- that's available  
22 outside -- with you.

23 What I plan to do is do Article 1 and Article 2  
24 from the old version and then jump to the revised  
25 version for the remainder of the time, because, as Ian

1 explained, we deleted 3, 4, 5 and 6 and replaced them  
2 wholesale.

3 Another part -- something else that I would  
4 like to mention is that, because of our time  
5 constraints, trying to finish this by 12:30 -- we're  
6 having to finish this by 12:30 -- I'd like to mention  
7 that we know that there's grammatical and stylistic  
8 changes and edits. We will accept them all. We'd like  
9 to get them in writing. We would like to confine the  
10 comments to changes that have a substantive effect.

11 UNIDENTIFIED SPEAKER: Are we going to be  
12 discussing Article 5 at all today?

13 MS. RUWART: If you're here for disclosure,  
14 ex parte and Part 5, that commences at 1:30, so that's  
15 why we need to get out of here by 12:30 for just the  
16 franchise part. But, of course, you're all welcome to  
17 come back.

18 That said, if everybody is ready -- and again,  
19 I remind you, when you make a comments, which I did not  
20 do, please state your name for the court reporter.

21 My name is Carole Ruwart. I'm from the Legal  
22 Department.

23 Are there any comments on Section 4010 of a  
24 substantive nature?

25 MR. DAVIS: Ken Davis on behalf of the

1 Franchise Tax Board. First of all, thank you for the  
2 opportunity to allow the Franchise Tax Board to comment  
3 today.

4 Just preliminarily I'd note that our comments  
5 are reflected in our memorandum that we submitted  
6 yesterday to the sections. And what we've done is tried  
7 to add language that would either improve the good work  
8 of the Board of Equalization or to make suggestions  
9 where appropriate and/or request clarification where  
10 appropriate or add additional sections to conform either  
11 to statutory provisions or to maybe some of the current  
12 regulations that are -- that might have been  
13 inadvertently omitted.

14 As to 4010, our first comment is to (a), and  
15 we've added in just a clarification and -- or we've  
16 included the Taxpayers' Bill of Rights reimbursement  
17 claim section as one of the provisions for applications  
18 to the Board of Equalization proceedings.

19 We've also added in on (c) a conflicts  
20 resolution clause just to clarify that where conflict  
21 exists between Part 4 and 5, that for Franchise Tax  
22 Board appeals matters, that Part 4 would control.

23 MS. RUWART: Thank you.

24 Are there any other comments of 4010?  
25 Terrific. Moving on to 4011, the Definitions section.

1 MR. DAVIS: Ken Davis again. On section 4011  
2 we were suggesting that this -- that the definitions --  
3 that these two definitions in Part 4 be incorporated  
4 into Part 5.

5 We've also suggested that in the term  
6 "taxpayer" that the term "business entity" or some  
7 variation thereof be included in the terms, because, as  
8 it stands now, the term "taxpayer," at least in this  
9 section, only applies to an individual. And then we've  
10 made corresponding comments as well in that same  
11 paragraph.

12 MS. RUWART: Thank you. Any other comments?  
13 On to 4012, Jurisdiction.

14 MR. DAVIS: Ken Davis on 4012.

15 We've changed the term for the Board to read  
16 "quasi-adjudicatory," rather than "administrative  
17 agency," and this is consistent with the statute in the  
18 Kopp Act referring to the Board as an adjudicatory body.

19 As to the deletion on Subsection (a), we're  
20 deleting that and suggesting that the term, "The Board  
21 shall not consider grievances," that that be moved over  
22 to the section dealing with matters that the Board will  
23 not consider, and that's at

24 Subsection (c) of the same section on 4012, and  
25 that's in our comments that's included in page 4.



1           We've also included on (b) just a phrase that  
2 clarifies the jurisdiction of the Board according to  
3 statute.

4           MS. RUWART: Okay. Any -- yes, sir, go ahead.

5           MR. LANGSTON: Bruce Langston from Franchise  
6 Tax Board.

7           Also there is a -- we made some changes in the  
8 written documents dealing with the six-month deemed  
9 denial provisions. We've had a number of statutory  
10 case -- statutory changes and court cases intervening  
11 describing how claims for refund is perfected and how  
12 the six-month period works, so we have made those  
13 comments in writing.

14           But those are to conform to the statutory and  
15 case law.

16           MS. MANDEL: Marcy Jo Mandel, State  
17 Controller's Office.

18           Just in response to the FTB comment about using  
19 "quasi-adjudicatory" body, based on the Kopp Act I would  
20 think that "quasi-judicial" would be better than  
21 "quasi-adjudicatory." "Adjudicatory" is a term of art,  
22 really, for the Kopp Act; and the Board, when it sits  
23 and hears appeals from Franchise Tax Board matters is in  
24 fact adjudicating a dispute between two parties. But  
25 with respect to all of the other types of hearings that

1 the Board holds, the Board is acting as an administrator  
2 of the tax or as an assessor of the tax. And  
3 "adjudicatory" for Kopp Act purposes includes any oral  
4 hearing before the Board as well as any matter that had  
5 been on a consent calendar and was removed from a  
6 consent calendar for any reason, including Board member  
7 contact with Board staff. So it's a term of art, I  
8 think, for the Kopp Act that probably shouldn't be mixed  
9 up here.

10 MS. RUWART: Okay. Any further comments?

11 Mr. Vinatieri?

12 MR. VINATIERI: Yes. Joe Vinatieri.

13 I had -- I think Ken was talking about the  
14 issue on the grievance. And I had put in my comments  
15 where it states, "The Board shall not hear any grievance  
16 against the Franchise Tax Board," to me that was a bit  
17 of an ambiguous term.

18 And I can understand it possibly going down  
19 under (c), but I think if we're going to -- if we're  
20 talking about tax protesters, if that's what we're going  
21 after here, I'm not sure that the language is as tight  
22 as it can be. I didn't give you an alternative. I  
23 guess I would need to think about that, but I think the  
24 word "grievance" could have a panoply of meanings for  
25 people who aren't even in the tax protest category.

1 MS. RUWART: Okay. Sir, there was a question?

2 MR. DANOWITZ: Steve Danowitz for Ernst and  
3 Young.

4 On (b) (1) I would suggest adding "or any other  
5 notice" after "notice of action" to make it consistent  
6 with (b) (2).

7 Also, and I don't remember the term in the  
8 statute, but a couple of years ago there was a new  
9 procedure put into the law where the FTB could deny  
10 credits, even though they're not issuing a notice of  
11 proposed assessment, and the taxpayer has a right to  
12 Board appeal. And so that concept, I think, ought to be  
13 included, unless I missed it.

14 MR. LANGSTON: No. Bruce Langston from  
15 Franchise Tax Board.

16 You are correct. That is called the notice of  
17 proposed carryover adjustment or NPACA, and we do issue  
18 those, and I agree that that should be included.

19 MS. RUWART: Mr. Kamp.

20 MR. KAMP: Getting back to the point about the  
21 word "grievance" in Subsection (a), I think that's a  
22 very well taken point. The word "grievance" actually is  
23 a term of art in the labor relations area. I think that  
24 the staff had something in mind when they chose that  
25 phrase. I don't know which it was, Ian or Brad, Brad,

1 one of you folks wrote it. What were you thinking about  
2 when you wrote that in there?

3 MR. FOSTER: We have a 25-odd-year-old formal  
4 opinion that uses a similar phrase, talking about how we  
5 will not hear grievances against the Franchise Tax  
6 Board.

7 MS. MANDEL: What kind of subject matter things  
8 were happening?

9 MR. FOSTER: It typically refers to --

10 MR. LANGSTON: I would point out it also -- we  
11 get a lot of appeals where people are basically just  
12 making irrelevant complaints about years that aren't at  
13 issue, perhaps the way they were treated on the phone.  
14 And the goal is to focus the appeal on the issue at hand  
15 and not let people go off on a rant about something that  
16 happened years ago, you know, in a different matter.

17 And so maybe "grievance" isn't the right word,  
18 but I think we want to point out that they are supposed  
19 to stick to the issue that's before the Board and not  
20 bring in basically things that are not relevant to that  
21 particular case. I think that was the goal.

22 MR. KAMP: How about something like, "Except  
23 for the circumstances under Subdivision (b), the Board  
24 will not review any actions of the Franchise Tax Board  
25 other than those directly at issue" and place the issue

1 in the appeal before them or something like that.

2 MS. RUWART: If there's no other -- are there  
3 any other comments on this? I think we understand the  
4 issue here. "Grievance" is not the best word. Rather  
5 than wordsmithing as a group, everybody go home, use  
6 their thesaurus, give us your best shot.

7 If you have any other comments?

8 MR. DANOWITZ: One other question, comment. It  
9 could be written in the positive of what the Board will  
10 hear as opposed to what the Board won't hear.

11 MS. RUWART: Okay. That's a good suggestion.

12 MR. FOSTER: And we'll accept written comments,  
13 but I'd just like to point out that Bruce from the FTB  
14 has essentially nailed what we were trying to describe  
15 with grievance, and we are open to any suggestion for  
16 how to phrase that better.

17 MS. PELLEGRINI: I'd like to remind everyone to  
18 please state your first name and then speak.

19 MS. RUWART: Yes, sir.

20 MR. DAVIS: A few other additions, our goal in  
21 paragraph (b), as Bruce noted, is really just conformity  
22 to the statute.

23 And where we think the language may -- you  
24 might want to revise, just to be consistent, but also we  
25 think that one of the triggering mechanisms is the

1 mailing, and that's why some of our comments are  
2 reflected there.

3 MS. RUWART: Okay.

4 MR. DAVIS: Moving to Subsection (c), we've  
5 added in some language just to hopefully clarify, to  
6 include types of deficiencies, assistance, and  
7 overpayments, that the Board determines.

8 MS. RUWART: All right.

9 MR. DAVIS: And then continuing on with kind of  
10 our discussion of the grievance area, the matters that  
11 the Board would not consider, we've added some language  
12 to clarify what the -- what the term "appellate court"  
13 meant, means to include federal and state appellate  
14 courts. And we've included language as to matters which  
15 the Board would not consider, to include tax  
16 liabilities, which should be discharged in bankruptcy,  
17 as well as challenges to procedures against the  
18 Franchise Tax Board.

19 MS. RUWART: Okay.

20 MS. PELLEGRINI: Your name, please, for the  
21 record.

22 MR. DAVIS: Ken Davis. Thank you.

23 MS. RUWART: Any other comments on 4012? Very  
24 productive.

25 We move now to Article 2, and when we get to

1 Subdivision (c), we'll move to Ian's change.

2 But is there any comment on subdivision (a)?

3 4020 is Basic Appeal Requirements and we're  
4 looking for specific comments on Subdivision (a).

5 MR. VINATIERI: This is Joe.

6 And I had just indicated on item 6 that I would  
7 used the words "notice of action," which was the formal  
8 term, rather than using a more generic statement there.

9 MS. RUWART: Okay.

10 MS. MANDEL: But is it -- oh, I'm sorry, Marcy.

11 Is it notice of action for everything that's  
12 being appealed, if they each have different --

13 MR. LANGSTON: A deemed denial wouldn't have.

14 MR. FOSTER: This is Ian Foster.

15 We did -- we -- when I first drafted it, I put  
16 "notice of action" in and I quickly struck it out  
17 because "notice of action" is sort of a term of art that  
18 refers to one type of notice that you can appeal from.

19 MR. VINATIERI: Okay.

20 MS. MANDEL: Joe.

21 MR. VINATIERI: Yeah, back behind, yeah, and  
22 I'm fine with that.

23 MR. DAVIS: Ken Davis, with the FTB.

24 On that same Subsection of 6, one of our  
25 concerns was that the -- was the reference date in

1 having the claimant or the taxpayer determine the  
2 appropriate date. And so we're suggesting that a copy  
3 of the notice be included in the submittal. That way  
4 everyone is on the same page as to the -- as to what is  
5 the -- what date Franchise Tax Board is using for its  
6 action, etcetera.

7 We're also requesting in 9 that the signatures  
8 of the taxpayer be only those people -- persons that are  
9 listed on the notice, because sometimes we have had  
10 instances where appeals have come in from people not  
11 listed on the notice.

12 So that's our -- we wanted to clarify that as  
13 well.

14 We've also included language that was in the  
15 prior section to say that the Franchise Tax Board's  
16 notice was, if it's directed to more than one taxpayer,  
17 each taxpayer desiring to contest it, should -- has the  
18 opportunity to appeal, jointly or separately.

19 MS. RUWART: Are there any other comments on  
20 Subdivision (a)?

21 MR. KOCH: Al Koch.

22 MS. RUWART: Yes.

23 MR. KOCH: I have a question about dates and  
24 item 6 and what that -- what that standard refers to for  
25 appeal purposes.



1           Is it the date on the notice, or is it the date  
2 of mailing? Because if you have, say, 30 or 90 days  
3 from the date, it seems to me it might be better to have  
4 it be the mailing date rather than the date on the  
5 notice.

6           MS. MANDEL: Al, it's Marcy.

7           It's the date of -- the date of mail, that the  
8 notice is mailed is the actual date, I think, in the  
9 statute that starts the running.

10          There have been, I don't know if it still  
11 happens, but rare circumstances in the past where the  
12 date on the face of the notice was not the actual  
13 postmark date. And in those instances, when the client  
14 walks in the door the day before, you sure say to them,  
15 "And where is that envelope, please?"

16          But, you know, I don't know how much that  
17 happens anymore, but you're right, if the mailing,  
18 actual mailing date that the thing gets out of FTB and  
19 to the post office is different than the date on the  
20 notice, is that right, Bruce, date of mailing actually?

21          MR. LANGSTON: Bruce Langston of Franchise Tax  
22 Board.

23          In 1999 Section 19045 was amended to require  
24 the Franchise Tax Board to put the date that the  
25 taxpayer may appeal on deficiency notices. And so

1 that's basically binding on the Franchise Tax Board.

2 So even if we mailed it earlier, if the notice  
3 told them they may file an appeal by a particular date,  
4 under 19045(b)(1), they're timely if they file within  
5 the date shown on the notice, which is usually 30 or 60  
6 days after the actual notice, the date the notice is  
7 dated.

8 MS. MANDEL: Right, and -- Marcy.

9 That was in conformity to the federal law for  
10 notices of deficiency. And I guess Al's question would  
11 go to the situation where you have it that date and you  
12 actually, instead of mailing earlier, the mail went out  
13 late and so that that date would be inside of the time  
14 period to file.

15 MR. LANGSTON: Can I point out that it's the  
16 next section, 4021, that talks about the time for filing  
17 an appeal. This is talking about what is included with  
18 the appeal, so maybe we should have that discussion when  
19 we get to that section.

20 MS. RUWART: Okay. Any more comments on  
21 Subdivision (a)? We'll move to Subdivision (b),  
22 Property Tax Assistance Appeals. Any substantive  
23 comments here?

24 MR. DAVIS: Ken Davis on behalf of the FTB.

25 We've changed the heading just to make sure

1 that it's -- it reflects this is for HRA appeals, and  
2 our entire section (b) revisions here or suggestions  
3 really are to be uniform and consistent with our  
4 comments on 4020(a), so the same comments apply.

5 MR. FOSTER: This is Ian Foster. And to  
6 respond to one of your -- the FTB's comments, the FTB's  
7 proposing to add into subdivision (b) with the HRA claim  
8 of adding any appeal amounts and facts and legal  
9 authorities. We had left that out because we're  
10 typically much more liberal and generous about taking in  
11 HRA appeals, talking about unrepresented people, usually  
12 very low-income, a different sort of audience. That's  
13 why we didn't include that stuff.

14 MS. RUWART: Anything else on subdivision (b)?  
15 Okay. Move to subdivision (c), what to mail, where to  
16 mail. This is incorporating -- the revised version is  
17 in your new packet, somewhere in the middle, and it  
18 looks like this. And this is where the -- it was  
19 modified to include electronic filing capabilities.

20 Is there any comments on -- you can probably  
21 comment on either the old or the new section here, but  
22 probably the new section.

23 MR. DAVIS: Ken Davis on behalf of the FTB.  
24 The change was made from the old (c) which included the  
25 requirement of mailing -- that the appellant mail two

1 copies to the Franchise Tax Board and that then -- or  
2 excuse me -- two copies to the Board, and then the Board  
3 would thereafter send one copy to the Franchise Tax  
4 Board.

5 And as I looked at the statute, 19046, that was  
6 consistent with the statute. We now have the new  
7 revision of (c), which really has one copy only going to  
8 the Board, and so we're just asking for clarification as  
9 to how that squares with the statute. And we'll leave  
10 that your good graces as well.

11 MR. FOSTER: This is Ian Foster. And we're  
12 aware of that. We originally wrote in two copies  
13 because that is exactly what the statute says, two  
14 copies. In our view, two copies is a waste of paper.

15 If we get one copy, there's no problem.  
16 Everything's -- I mean, we're going to scan it anyway.  
17 It will be e-mailed to FTB under our current procedures.

18 I mean, we're certainly open to question about  
19 whether we have -- I mean, I don't know if your question  
20 is whether we're unable to take the appeal because the  
21 statute requires that someone file two copies of it.

22 MS. PELLEGRINI: This is Debbie Pellegrini.  
23 The practice is, many of the HRAs do not send in two  
24 copies. It is easier to go over to the copy machine and  
25 make a copy than it is to send it back to them and say,

1 "Please send us a second copy." And that's a fact. But  
2 it does not preclude them, of course, from sending the  
3 copy.

4 MS. MANDEL: This is Marcy. (c) applies to all  
5 appeals; right? Regular FTB appeals as well. So . . .

6 MR. DAVIS: All appeals.

7 MS. MANDEL: Right. And the statute -- and I  
8 haven't read it in a while -- requires two copies to the  
9 Board, it requires one copy to -- it requires filing  
10 with FTB -- it used to require sending a copy to the  
11 FTB. Is that how it's phrased?

12 MR. LANGSTON: No. That changed a long time  
13 ago.

14 MR. DAVIS: 19046 --

15 MS. MANDEL: It just requires two copies be  
16 filed with BOE.

17 MR. DAVIS: BOE, and then a copy to the -- and  
18 then BOE would send a copy to Franchise Tax Board.

19 We understand that, you know, the practice is  
20 that -- and, you know, I'm sure it's common for only one  
21 appeal to be sent. We're just leaving it in your good  
22 hands as to how you want to square that up.

23 We also -- you know, I think we agree with the  
24 idea of the electronic mailing provision.

25 The other concept that I note that you want to

1 include throughout this is that electronic -- is that  
2 this section be used throughout.

3 One of the things we were trying to accomplish,  
4 which we haven't spoken in our comments right now, is  
5 what is going to be the best way to facilitate in  
6 expediting Franchise Tax Board receiving either appeals  
7 or supplemental briefing at the same time the Board --  
8 that Board staff receives it. So we are also suggesting  
9 that when reply briefs be sent, that language may be  
10 included that would have one copy be filed with the  
11 Board and one copy be sent to the opposing party.

12 MS. RUWART: Are there any other questions or  
13 comments on subdivision (c)? Very good. We'll move  
14 back to your old original version for Section 4021.

15 MR. DAVIS: Ken Davis. And this is on  
16 Subsection (a). We've included some language, just to  
17 try and clarify some language as to the statutory  
18 reference and jurisdictional issues. And we pulled some  
19 from the former section 5071, which outlined the Board's  
20 authority. We thought that was some generally good  
21 language.

22 As to the statutory deadlines, as this is what  
23 Bruce was referring to, we've included, consistent with  
24 the, I think it's 4012, some of the jurisdictional  
25 language of -- that actions be -- that the triggering is

1 the mailing by the Franchise Tax Board on the date shown  
2 of the notice. And we used that language consistently  
3 throughout.

4 MS. MANDEL: And this is Marcy.

5 On item 3, I'm shocked and appalled to see  
6 that's the way it was originally drafted by staff.

7 MR. FOSTER: This is Ian.

8 I'm sorry we shocked and appalled you.

9 MS. MANDEL: You did.

10 MR. FOSTER: This was an inadvertent error. I  
11 was cutting and pasting from one paragraph to the next.

12 MR. DAVIS: I think that's -- and then we've  
13 also highlighted, our comment, we've highlighted it in  
14 bold, it's our footnote 30 and 31 to our comments, just  
15 to clarify the distinction in the -- in the different  
16 days and how the -- and the application relating to  
17 unpaid interest versus a denial of abatement for paid  
18 interest.

19 So it's maybe -- and maybe there's another way  
20 to handle it, but we wanted to make sure that was  
21 focused for the taxpayer.

22 We've added three additional subsections, or I  
23 guess two sections. One is on (a)(6). We've added some  
24 additional interest abatement language.

25 And we've also added -- we've also, I'm sorry,

1 we've also added jeopardy assessment.

2 MS. RUWART: Yes, sir.

3 MR. DANOWITZ: Steve Danowitz.

4 I think we need to add into (a) that same  
5 concept of the notice of the credit adjustment.

6 And then on (a) (3), the language "not later  
7 than 90 days from the date the Franchise Tax Board is  
8 deemed to have denied."

9 MS. MANDEL: That's what I was shocked and  
10 appalled at.

11 MR. DANOWITZ: Oh, I'm sorry.

12 MS. MANDEL: Yes, yes, because the Board  
13 supported the taxpayer and the California Supreme Court  
14 to make sure that everybody understood a deemed denial  
15 is not mandatory.

16 MR. DANOWITZ: Okay.

17 MS. RUWART: Any other comments on  
18 subdivision (a)?

19 Moving to Subdivision (b), which deals with  
20 extensions.

21 MR. LANGSTON: Bruce Langston from Franchise  
22 Tax Board.

23 We recommend that this section be deleted  
24 entirely. We have prepared extensive written comments  
25 explaining the statutory basis. And a number of recent



1 court of appeal decisions very clearly state that  
2 statutory requirements must be strictly adhered to, and  
3 there is no jurisdiction, there's no ability of a state  
4 agency to extend those statutes. So rather than going  
5 through them now, we've submitted our legal arguments  
6 that you can go over. But we do, we take the position,  
7 and in fact we do now when we file replies, that this is  
8 not authorized under the law.

9 MS. RUWART: Okay.

10 Any other comments on (b)?

11 MR. DAVIS: I'd just add one other comment to  
12 Bruce's, and our legal arguments are outlined in our  
13 memo, but we've also pointed out, just as a public  
14 policy argument, that the extensions, as they're  
15 written, are inconsistent with a government mandate,  
16 because it gives more favorable treatment to  
17 paper-filers being able to mail than those E-filers that  
18 would have to adhere to the deadlines, to the strict  
19 deadlines.

20 MS. RUWART: Subsection (c), comments? This  
21 deals with date of mailing, for those who are still  
22 mailing.

23 MR. DAVIS: Ken Davis.

24 We've just added a note as to the definition of  
25 delivery service that's included in Part 5.

1 MS. RUWART: Subdivision (d) deals with  
2 examples. Any comments on those?

3 MR. LANGSTON: Yes, Bruce Langston.

4 Franchise Tax Board recommends the examples be  
5 deleted for the same reason that we think Subsection (b)  
6 should be deleted.

7 MS. MANDEL: I have -- I just have a  
8 question -- it's Marcy -- on Subsection (b).

9 I guess I never focused on this. I mean, I do  
10 have a panic file in my garage, which has a lot of  
11 research in it about mailing deadlines and what the  
12 deadline is and what it's going to be extended, so maybe  
13 I'll have to find my panic file. But I thought that the  
14 regular extension of time for responding keyed off of  
15 where the thing was mailed to that you're responding to.

16 Because the idea was that you couldn't respond  
17 to it if it was mailed to you, you know, overseas, that  
18 the mail would take so much longer, that you would have  
19 more time to respond.

20 But maybe I need to go over that. Maybe I've  
21 been too far away from the Civil Procedure Code.

22 MR. VINATIERI: Uh-huh.

23 MR. FOSTER: This is Ian Foster again.

24 In drafting this I basically just incorporated  
25 the existing regulations.

1 MS. MANDEL: Okay. I'll believe it. Thank  
2 you.

3 MS. RUWART: Any other comments in Subdivision  
4 (d), the examples?

5 Moving on to Section 4022, Accepting or  
6 Rejecting an Appeal. We have several subdivisions.  
7 Let's start with Subdivision (a), determinations of  
8 jurisdiction and timeliness. No comments?  
9 Subdivision (b), accepting the appeal.

10 MR. DAVIS: Ken Davis. The Franchise Tax Board  
11 recommends that, along with the copy of the appeal, that  
12 Chief of Board Proceedings provides a copy of the  
13 acknowledgement letter, which is consistent with current  
14 practice.

15 MS. RUWART: Subdivision (b), anything else?  
16 Subdivision (c), issues relating to jurisdiction and  
17 timeliness.

18 MR. LANGSTON: Bruce Langston from Franchise  
19 Tax Board. We have actually proposed another subsection  
20 allowing for bifurcation.

21 From our perspective, it's tremendously  
22 burdensome to include issues of jurisdiction in the  
23 appeal. It will be much easier, I think, for Franchise  
24 Tax Board and the taxpayer to deal with jurisdictional  
25 issues first; and only if it's determined there is

1 jurisdiction, then we would write the brief addressing  
2 the issues.

3 I mean, a lot of our cases have, you know,  
4 major unitary issues, a lot of factual development. And  
5 if, for example, the case is clearly outside the statute  
6 of limitations, it's a refund claim where the amount  
7 wasn't paid, you know, certain basic jurisdictional  
8 needs are not met, the proposal basically -- and the  
9 current practice basically requires us to spend lots of  
10 time, the taxpayer has to spend lots of time dealing  
11 with the substantive issues, doing factual development;  
12 and then, as it turns out, if we're correct that there's  
13 no jurisdiction, then none of that work was necessary.

14 So our view is, it would be better government  
15 to deal with jurisdiction first, as in a normal court  
16 situation, and only if there's jurisdiction would we --  
17 we would suggest that then we would proceed to hearing.  
18 And we have written comments suggesting that.

19 MS. RUWART: Okay. Yes.

20 MR. VINATIERI: This is Joe. This is the first  
21 time I've had a chance to look at this bifurcation  
22 issue. But it seemed to me that if the Board determines  
23 to go forward with having the Appeals Division hold  
24 appeals conferences relative to income tax matters, then  
25 Bruce's comments would dovetail well into that context,

1 so that you would only get into a hearing with an  
2 appeals conferee relative to a jurisdictional issue,  
3 which would then keep it out of the, I guess, I suppose,  
4 the domain of the Board and having to get into that, if  
5 that's what we're looking at doing with having a --  
6 holding appeals conferences in income tax cases.

7 MS. MANDEL: Well, that would be true as long  
8 as they don't have to fully brief before. He'd still be  
9 looking at -- this is Marcy -- bifurcation of --  
10 assuming this whole sort of business of appeals.

11 UNIDENTIFIED SPEAKER: And then I guess you'd  
12 have to dovetail the whole brief -- the opening brief  
13 sort of concept with this as well, because otherwise the  
14 taxpayer will go through all this briefing.

15 MR. LANGSTON: Bruce Langston again. Perhaps  
16 we could -- if we do end up with the appeals conference  
17 procedure, maybe the way to resolve this is having a  
18 separate appeals conference right at the beginning about  
19 jurisdiction and bring those, and then once that's  
20 resolved, then go forward. That would be another  
21 possibility.

22 MR. FOSTER: This is Ian Foster. Those are  
23 excellent suggestions. And we appreciate getting them  
24 in writing as well.

25 MR. VINATIERI: It's hard to get them in

1 writing when we just got this on Friday.

2 MR. FOSTER: I understand. I understand. You  
3 have another week or so.

4 MR. VINATIERI: Yeah. I'm going to speak to  
5 that in a couple of minutes.

6 MS. RUWART: Very good. Any more on  
7 subdivision (c)? How about moving to subdivision (d),  
8 rejecting the appeal? No comments on that?

9 Moving to Section 4023, Perfecting an Appeal.

10 MR. VINATIERI: I'm sorry, Carole. This is  
11 Joe. I didn't turn my page quick enough.

12 I had indicated in my submission that I had a  
13 concern about the language of alternative rights and  
14 remedies, whatever those are. I'm not sure what it is  
15 that's being referred to there. And if there are some  
16 specific items that would constitute rights or remedies,  
17 I think we just ought to go ahead and specify what those  
18 items are, because I don't know what they are.

19 MR. LANGSTON: Bruce Langston from Franchise  
20 Tax Board. I think in many cases, if it's a deficiency  
21 case, and the taxpayer has missed the deadline, we  
22 advise them they can pay the amount and file a refund  
23 claim, go through that route.

24 If they are beyond the statute of limitations  
25 on a refund claim, we advise them that they can go to

1 the old Board of Control and go through that route.

2 The other thing is, if it's a claim that has  
3 not been fully paid, we advise them how much needs to be  
4 paid in order for them to perfect their claim and go to  
5 appeal.

6 And I think this was written generally because  
7 in every case there's something different. There might  
8 be a third avenue, you know, that we haven't thought  
9 about in a specific case, you know.

10 MR. VINATIERI: This is Joe. Those are all  
11 good points, specific points. My concern was that this  
12 is going to be under the jurisdiction of Debbie, and so  
13 it's got to come from the Board of Equalization, as I  
14 see it. So if the Board of Equalization, Board  
15 Proceedings Division, were to take that language that  
16 Bruce has just stated and put that in the letter, then  
17 that would take care of my concern.

18 MR. FOSTER: This is Ian Foster. We pulled  
19 that language out of the old reg. We're certainly open  
20 to rephrasing it or deleting it.

21 MS. RUWART: Any more comments on  
22 subdivision (d) or 4022?

23 MR. DAVIS: This is Ken Davis. Just going back  
24 to the bifurcation issue, one other addition to that  
25 might be, we're still in the perfecting-the-appeal area,

1 and as I read your, briefly, your new submission of last  
2 Friday, that follows, once there's a determination, that  
3 the appeal is perfected. So maybe there's a concept  
4 here of dealing with the bifurcation and jurisdiction at  
5 that time, even before it goes to the appeal -- or to  
6 your appeals conference, if that type concept goes  
7 forward.

8 MR. FOSTER: We're certainly going to think  
9 about a number of options on how to handle this.

10 MS. RUWART: 4022, last call. Okay. Thank  
11 you. We're doing well on time. We'll keep going on  
12 this pace and we'll be just fine.

13 Section 4023, Perfecting an Appeal.  
14 Subdivision (a), the general provisions, any comments?

15 MR. DAVIS: Ken Davis with Franchise Tax Board.  
16 We're suggesting that the word "substantially"  
17 be stricken just for conformity to the statute.

18 MS. RUWART: Any other comments on  
19 Subdivision (a)?

20 Okay. Moving on to Subdivision (b), the time  
21 to perfect the appeal.

22 MR. DAVIS: Ken Davis again.

23 We're just suggesting some additional language  
24 to provide a copy of notice to the Franchise Tax Board  
25 of the perfected appeal.



1 MS. RUWART: Any other comments on  
2 Subdivision (b)? Very good.

3 This completes our taking of comments on  
4 Articles 1 and 2. At this point I am going to close my  
5 book on the original version and bring out the revised  
6 version. I think the most efficient thing to do that is  
7 if you have made comments on the old version, you can of  
8 course feel free to submit them in writing. I know  
9 there was carryover between the old and the new.

10 We'll try to stick to the new version unless --  
11 I don't want to foreclose anybody from commenting, so I  
12 guess I shouldn't have said I will close my book. I  
13 will keep it open. But we should try and work off the  
14 new version.

15 But if anybody has any questions at any point  
16 in time of where the old went into the new and they have  
17 a comment on the old that's important to them, please  
18 feel free to bring it up. I want to make sure that  
19 everybody is heard on every single point they want to  
20 discuss.

21 MR. KOCH: Carole?

22 MS. RUWART: Yes.

23 MR. KOCH: Al Koch.

24 Is the new Ian's paper?

25 MS. RUWART: Yes.

1 MR. KOCH: Okay.

2 MS. RUWART: It has a very bland cover. It  
3 says "to interested parties." It has no date. It has  
4 no anything. It's about 15 --

5 MS. MANDEL: Has no page numbers.

6 MS. RUWART: Has no page numbers.

7 About 15 pages into it it has bold and all  
8 capitalized type that starts with the word "replace."

9 Okay. So the first part of -- up at the top of  
10 this paper where it says, "Replace Subdivision (c) of  
11 Section 4020," we've already handled that.

12 Now, I'm moving down to the bottom half of that  
13 first page where it says, "Replace Articles 3 through 6  
14 of Part 4 as published on the website September 14th,  
15 2005, with the following Articles 3 through 5."

16 MR. KOCH: Should we number the pages so we  
17 know where we are?

18 MS. RUWART: That's a great idea.

19 Let's call this page page 1. And we will just  
20 keep going -- starting where it says, "Replace  
21 Subdivision (c) of Section 4020," that's page 1.

22 And we'll just take -- everybody take a moment  
23 to number their pages.

24 People on the phone, are you following along?  
25 We're all -- we're numbering our pages. I have 19